

CRIMINAL MISC. APPLICATION NO. 4116 OF 1991.

Date of decision: 19.6.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. A.B. Munshi for Mr. A.J. Patel, advocate for petitioners.

Mr. N.D. Nanavati, Sr. Advocate for respondent No.1.

Mr. S.T. Mehta, A.P.P. for respondent No.2.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain,J.

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June 19, 1997.

Oral judgment:

Heard Mr. Munshi for Mr. A.J. Patel, learned advocate for the petitioners. Mr. Nanavati, learned Sr. Advocate appears for respondent No.1. Mr. S.T. Mehta, learned A.P.P. appears for respondent No.2- State.

Petitioner No.1 is the President and Petitioner No.2 is the General Manager (Sales) of TVS Suzuki Limited, a

company manufacturing two wheeler vehicles. The respondent No.1/ original complainant was appointed as dealer vide letter dated 28.2.1985 and accordingly as per terms and conditions of the dealership agreement, the respondent No.1 was required to deposit Rs.1,30,000/with the manufacturer i.e., TVS Suzuki Limited. It is the case of respondent No.1 that the business continued for quite a long period and thereafter was suddenly stopped. A question, therefore, arose about settlement of accounts and refund of deposit. As alleged as per the agreement of dealership the respondent No.1 was entitled to receive commission on the sale of vehicles by respondent No.1. From the record it appears that despite several demands by respondent No.1 the accounts were not settled. Hence respondent No.1 filed private complaint under sections 406 and 409 of the IPC in the Court of learned Chief Judicial Magistrate at Amreli.

On process being issued by the court, the petitioners/original accused have preferred this application under Section 482 of the Criminal Procedure Code invoking inherent jurisdiction for quashing the same and prevent abuse of process on the ground that the complaint does not disclose commission of any offence muchless any cognizable offence and that the transaction is purely of civil nature and that the complaint has been filed with ulterior motive to harass the petitioners.

The main object of exercising inherent powers under Section 482 of Criminal Procedure Code is to prevent abuse of process of court and/or to secure the ends of justice. Process of Court should not be permitted to be used against any person for harassment and/or to settle score on any other count especially of civil nature.

In this case, even if the allegations made in the FIR/complaint are taken on their face value and accepted in entirety do not *prima facie* constitute any offence. The respondent No.1 complainant himself has stated that he had written number of letters to the petitioners/accused to settle the accounts and refund the amount of deposit lying with the company. The respondent No.1 had also requested the company of which the accused-petitioners are holding managerial posts to settle the accounts of commission for the sale effected during the existence of dealership agreement. Payment of commission on the sale of vehicles by the complainant under the agreement of dealership is purely a question of civil nature and subject matter of interpretation dealership agreement. Non-payment of commission would be a breach of agreement giving rise to civil remedy but

nonetheless is a criminal offence. Similarly, amount of deposit was also paid under the agreement of dealership and refund thereof would also be governed by the terms and conditions and settlement of accounts. It is needless to say that settlement of accounts is a civil wrong and would be subject to the terms and conditions of dealership agreement. The party having dispute can take recourse to the civil remedy for redressal of civil wrong.

The complaint has been registered under Sections 406 and 409 of the IPC. Section 406 of IPC envisages an offence in the nature of criminal breach of trust as defined under Section 405 of IPC which presupposes entrustment of property and the person who has been entrusted such property dishonestly misappropriates or converts to his own use or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged. In this case, according to the allegations, the respondent No.1 complainant has failed to prove the basic ingredients of entrustment as defined under Section 405. The sum of Rs.1,30,000/- paid to the petitioners/ accused by way of deposit cannot be said an entrustment of property. It is nothing else but a payment in accordance with the terms and conditions mutually agreed by parties under the agreement of dealership. This transaction cannot be as entrustment by the complainant to the accused/ petitioners for holding it for and on behalf of the respondent No.1. If the very entrustment is lacking the complaint for offence under section 406 of IPC does not arise. Similarly, if the case is not made out within the four corners of Section 405 of IPC it cannot be said that the petitioners/accused have committed an offence under Section 409 of IPC. As per Section 409 of IPC also the basic ingredient of entrustment is a condition precedent. In this case, the respondent No.1/ complainant has not said anything about the entrustment of property and consequent misappropriation with dishonest intention. Thus, on the face of it, the allegations do not constitute any offence even if taken at its face value. Consequently, the proceedings cannot be permitted to be continued and deserves to be quashed. Accordingly, the same is quashed and set aside. Rule is made absolute.